

Virginia Regulatory Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	Article 1 (9 VAC 5-80-50 et seq.) of 9 VAC 5 Chapter 80
Secondary Actions:	Article 3 (9 VAC 5-60-120 et seq.) of 9 VAC 5 Chapter 60, Article 2 (9 VAC 5-80-310 et seq.) of 9 VAC 5 Chapter 80, Article 3 (9 VAC 5-80-360 et seq.) of 9 VAC 5 Chapter 80, Article 4 (9 VAC 5-80-710 et seq.) of 9 VAC 5 Chapter 80
Action Title:	Federal Title V Operating Permits for Stationary Sources (Rev. K97)
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.

The regulation amendments concern provisions covering federal operating permits and can be summarized as falling primarily into seven categories: (1) amendments proposed to remove deficiencies that prevent full federal approval for Virginia's Title V program; (2) amendments proposed to support commitments made in a letter of February 27, 1997, from the DEQ director to EPA's Region III administrator amending previous program submittals; (3) amendments proposed to incorporate guidance from EPA's White Papers of July 1995 and March 1996; (4) amendments proposed to clarify applicable state requirements; (5) amendments proposed to bring the acid rain program into conformity with federal regulations; (6) amendments proposed to incorporate provisions relating to the new federal Compliance Assurance Monitoring (CAM) rule; and (7) amendments proposed to incorporate provisions relating to § 112(j) of the federal Clean Air Act.

Basis

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation proposed. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments and that the proposed regulation amendments comport with the applicable state and/or federal law is available upon request.

Purpose

Please provide a statement explaining the rationale or justification of the proposed regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulations is to establish a federally approved operating permit program for stationary sources of air pollution. The goal of this program is the issuance of a comprehensive permit specifying all applicable state and federal requirements for all pertinent emissions units in each covered facility. The consolidation of these requirements into one permit will assist the source in compliance and the department in enforcement, thus protecting and enhancing the public health and welfare of the citizens of Virginia. The proposed amendments are being made to bring the regulations into compliance with federal guidance concerning the implementation of Title V of the federal Clean Air Act (42 U.S.C. §§ 7661-7661f) and of federal regulations concerning state operating permit programs (40 CFR Part 70).

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

1. reduction of insignificant activity threshold for carbon monoxide [9 VAC 5-80-720 B 3]
2. requirement that sources included in permit applications sufficient information regarding insignificant emissions units to enable applicable requirements for those units to be identified [9 VAC 5-80-50 F, -360 E]
3. requirement that applicable requirements for insignificant emission units be included in permits [9 VAC 5-80-110 A 1, -490 A 1]
4. correction of definition of insignificant emergency or standby compressors, pumps, and generators [9 VAC 5-80 720 C 4]

5. prohibition of off-permit changes pertaining to acid rain provisions of Title IV [9 VAC 5-80-280 C 1, -680 B 1 a (1) & C 1]
6. correction of affirmative defense provisions [9 VAC 5-80-250 B 4, -650 B 4]
7. correction of applicability deferral provisions [9 VAC 5-80-50 D b]
8. correction of definitions of "malfunction" and "research and development facility" [9 VAC 5-80-60,-370]
9. requirement of applicable requirements citation for insignificant activities [9 VAC 5-80-90 E 1, -440]
10. correction of administrative amendments provisions [9 VAC 5-80-200 A 1, -560 A 1]
11. correction of malfunction notification provisions [9 VAC 5-80-250 B 4 a & b, -650 B 4 a & b]
12. clarification of fee payment schedule provisions [9 VAC 5-80-350 B & C]
13. elimination of reference to de minimis emissions rates table in 40 CFR 63.44 [9 VAC 5-80-720B5&6]
14. clarification of applicable state requirements [9 VAC 5-80-60 C, -110 C, -300 A, -370, -490 C, -700 A]
15. amendments to comply with federal Compliance Assurance Monitoring rule in 40 CFR Part 64 [9 VAC 5-80-110 E 1, -110 K 5 c, -110 K 5 e, -490 E 1, -490 K 5 c, -490 K 5 e]
16. amendments to comply with updated federal federal acid rain provisions in 40 CFR 72.2 et seq. [9 VAC 5-80-370, -380, -400, -420, -450, -460, -610, -620]
17. integration of EPA's list of trivial activities with current insignificant activities [9 VAC 5-80-720 A]
18. new regulation to comply with requirements of § 112(j) of the federal Clean Air Act [9 VAC 5-60-120 et seq.]

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Primary advantages to the public: The public participation requirements of the program provide an opportunity for citizens to provide comments to the department about the compliance of facilities emitting air pollutants. Sources, not the public, pay for the cost of controlling their air emissions. Periodic reviews of polluting activities are conducted to ensure that effective emission reductions are taking place.

Primary disadvantage to the public: Sources may pass on their increased costs under the program to the consumer.

Primary advantages to the department: The program enhances the department's ability to enforce the requirements mandated by the federal Clean Air Act by clarifying for sources exactly which air quality requirements apply. The program obviates the need for consent orders under certain conditions, avoiding their negative connotations. It enables the department to permit facilities at emission levels closer to actual emission levels with a reasonable margin for normal operation. It also provides an enforcement mechanism for the department to determine a facility's compliance with applicable regulations (enforcement of the regulations without the permit is more difficult because specific conditions for the individual facility have not been derived from those regulations).

Primary disadvantage to the department: Implementation of the program requires large increases in staffing and funding.

Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; and (d) the agency's best estimate of the number of such entities that will be affected. Include a description of the beneficial impact the regulation is designed to produce.

1. Entities Affected: Stationary sources of air pollution defined as major by the federal Clean Air Act and subject to the Title V program (approximately 350).

2. Fiscal Impact

a. Costs to Affected Entities

The projected cost of the regulation amendments to affected entities is expected to be minimal. Very few sources will be affected by the lowering of the CO insignificance threshold because the equipment necessary to accomplish that change is generally already in place for the control of NO_x and SO₂. The other amendments largely involve administrative clarifications whose attendant costs will be negligible.

b. Costs to Localities

The projected cost of the regulation amendments on localities is not expected to be beyond that of other affected entities and are addressed in paragraph 2a above.

c. Costs to Agency

The agency's cost for administering the permit program is approximately \$9.3 million annually, with slight annual increases to accommodate the cost of living. It is not expected that the

regulation amendments will result in any cost to the department beyond that currently in the budget. The source of department funds to carry out this regulation is the permit fees charged to affected entities under the permit program. The activities are budgeted under the following program (code)/subprogram (code): Environmental Resources Management (5120000)/Air Quality Stationary Source Regulation Enforcement (5121400)/Environmental Research and Planning (5120000)/Air Quality Research and Planning (5130700). The costs are expected to be ongoing.

d. Benefits

The primary benefit of the regulation amendments is to remove the last remaining impediments to federal approval of Virginia's Title V program. If Virginia does not submit a corrective program by June 9, 2000, EPA will be required to apply one or both of the sanctions authorized by section 179(b) of the Clean Air Act: (1) the prohibition of grant awards for transportation projects in nonattainment areas; and (2) the imposition of a 2:1 ratio of emission reductions to increased emissions for emission offsets.

e. Small Business Impact

The impact upon facilities that meet the definition of small business provided in § 9-199 of the Code of Virginia is addressed in paragraph 2a above.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the contemplated regulation. The discussion of these requirements should include a description of their scope and the extent to which the requirements are mandatory or discretionary. Full citations for the legal requirements and web site addresses, if available, for locating the text of the cited legal provisions should be provided.

Federal Clean Air Act (CAA):

<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):

http://www.gpo.gov/su_docs/aces/aces140.html

Title V of the Clean Air Act requires states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. The federal regulations required to be developed under Title V, 40 CFR Part 70 (57 FR 32250, July 21, 1992), specify the minimum elements that must be included in state operating permit programs.

CAA, Section 502(a) and 40 CFR 70.3(a) require that the following sources be covered under the provisions of any Title V program:

1. Affected sources as defined under the acid deposition provisions of Title IV of the Act.

2. Major sources, defined as follows:
 - a. any source of air pollutants with the potential to emit 100 tons per year (tpy) or more of any pollutant;
 - b. in ozone nonattainment areas designated as serious, any source emitting 50 tpy or more of VOCs or NO_x; for severe or extreme nonattainment areas, sources emitting 25 and 10 tpy or more of VOCs or NO_x, respectively; and
 - c. any source with the potential to emit 10 tpy of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants regulated under Section 112 of the Act.
3. Any other source, including an area source, subject to a hazardous air pollutant standard under Section 112 of the Act.
4. Any source subject to new source performance standards under Section 111 of the Act.
5. Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration program under Title I, Part C of the Act or the nonattainment area new source review program under Title I, Part D of the Act.
6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

CAA, Section 502(b) and 40 CFR 70.4(b) and other provisions of 40 CFR Part 70, as noted, set out the minimum elements that must be included in each program, as follows:

1. Requirements for permit applications, including standard application forms, compliance plans and criteria for determining the completeness of applications. (40 CFR 70.5)
2. Monitoring and reporting requirements. (40 CFR 70.6(a)(3))
3. A permit fee system. (40 CFR 70.9)
4. Provisions for adequate personnel and funding to administer the program.
5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act. (40 CFR 70.7(a)(1))
6. Authority to issue permits for a fixed term, not to exceed five years. (40 CFR 70.6(a)(2))
7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan. (40 CFR 70.6(a)(1))

8. Authority to terminate, modify, or revoke and reissue permits for cause and a requirement to reopen permits in certain circumstances. (40 CFR 70.7)
9. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than \$10,000 per day, and appropriate criminal penalties. (40 CFR 70.11)
10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion. (40 CFR 70.8(c) and (e))
11. Procedures for (i) expeditiously determining when applications are complete, (ii) processing applications, (iii) public notice, including offering an opportunity for public comment, and a hearing on applications, (iv) expeditious review of permit actions, and (v) state court review of the final permit action. (40 CFR 70.5 (a)(2) and 70.7 (h))
12. Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act shall be treated as a final permit action solely to allow judicial review by the applicant or anyone also who participated in the public comment process to compel action on the application.
13. Authority and procedures to make available to the public any permit application, compliance plan, permit emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of section 114(c) of the Act; the contents of the permit itself are not entitled to confidentiality protection.
14. Provisions to allow operational flexibility at the permitted facility.

CAA, Section 503(b) and 40 CFR 70.5(c)(8) and (9) require that applicants shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements of the Act. The compliance plan must include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every six months. The permittee must also certify that the facility is in compliance with any applicable requirements of the permit no less frequently than annually. The permittee must also promptly report any deviations from permit requirements to the permitting authority.

CAA, Section 503(d) and 40 CFR 70.7(b) specify that a source's failure to have an operating permit shall not be a violation of the Act if the source owner submitted a timely and complete application for a permit and if he submitted other information required or requested to process the application in a timely fashion.

CAA, Section 503(e) and 40 CFR 70.4(b)(3)(viii) require that a copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. Any information that is required of an applicant to submit and which is entitled to protection from disclosure under section 114 (c) of the Act can be submitted separately.

CAA, Section 504 and 40 CFR 70.6(a)-(c) specify what is to be included in each operating permit issued under this program. These provisions require each permit to include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements, including the requirements of any state implementation plan.

CAA, Section 504(b) indicates that the EPA administrator may prescribe, by rule, procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated by the Act. Continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.

CAA, Section 504(c) and 40 CFR 70.6(a)(3) require that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under 504(b) and to any other requirements specified in federal regulation. Any report required to be submitted by a permit issued to a corporation shall be signed by a responsible corporate official, who shall certify its accuracy.

CAA, Section 504(d) and 40 CFR 70.6(d) allow the state permitting authority to issue a general permit covering numerous similar sources after notice and opportunity for public hearing. Any general permit shall comply with all program requirements. Any source governed by a general permit regulation must still file an application under this program.

CAA, Section 504(e) and 40 CFR 70.6(e) allow the state permitting authority to issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under the Act. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location.

CAA, Section 504(f) and 40 CFR 70.6(f) provide a permit shield for permittees. This section specifies that compliance with a permit issued in accordance with Title V shall be deemed in compliance with CAA, Section 502, or with the program. And unless otherwise provided by the EPA administrator and by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee, if:

1. the permit includes the applicable requirements of those provisions, or
2. the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

CAA, Section 503(c) and 40 CFR 70.5(a)(1) specify that all sources required to be permitted under a Title V program are required to submit an application within twelve months after the date EPA approves the State's program. The State permitting authority may specify an earlier date for submitting applications. The State permitting authority must establish a phased schedule for acting on permit applications submitted within the first

full year after program approval, and must act on at least one-third of the permits each year over a period not to exceed three years after approval of the program. After acting on the initial application, the permitting authority must issue or deny a complete application within 18 months after receiving that application.

CAA, Section 505(a) and 40 CFR 70.8(a) require the state permitting authority to send EPA a copy of each permit application and each permit proposed to be issued. For each permit application or proposed permit sent to EPA, CAA, Section 505(a) and 40 CFR 70.8(b) also require the permitting authority to notify all states whose air quality may be affected and that are contiguous to the state in which the emission originates, or that are within 50 miles of the source. This notice must provide an opportunity for these affected states to submit written recommendations respecting the issuance of the permit and its terms and conditions. CAA, Section 505(b) and 40 CFR 70.8(c) provide for EPA objections to any permit which contains provisions that are not in compliance with the requirements of the Act or with the applicable State Implementation Plan. This section also provides that any person may petition the EPA administrator within 60 days after the expiration of the 45-day review period, if no objections were submitted by the EPA administrator. Furthermore the state permitting authority may not issue the permit if the EPA administrator objects to its issuance unless the permit is revised to meet the objection. If the state permitting authority fails to revise and resubmit the permit, EPA must issue or deny the permit in accordance with the requirements of Title V. Under section 505(d) and 40 CFR 70.8(a)(2), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. CAA, Section 505(e) and 40 CFR 70.7(g) allow the EPA administrator to terminate, modify, or revoke and reissue an operating permit issued under a state's program, if he finds that cause exists for such action.

Affected sources as defined under the acid rain provisions of Title IV of the Act are one of the primary source categories required to be covered under the provisions of any Title V program.

CAA, Section 408 of Title IV covers the permit and compliance plan requirements for affected sources, those stationary sources that have at least one emission unit emitting air pollutants which cause acid rain. CAA, Section 408(a) states that the requirements of Title IV are to be implemented by permits issued to affected sources in accordance with Title V, as modified by the requirements of Title IV. Any permit issued to an affected source must prohibit all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that is held for the source. An allowance is the authorization to emit one ton of sulfur dioxide during or after a specified calendar year.
2. Exceedances of applicable emissions rates.
3. The use of any allowance prior to the year for which it was allocated.
4. Contravention of any other provision of the permit.

Permits must be issued for a period of five years. No permit can be issued that is inconsistent with the applicable requirements of Titles IV and V.

CAA, Section 408(b) requires that compliance plans be submitted with each permit application. Alternative methods of compliance may be authorized by permitting authorities; however, a comprehensive description of

the schedule and means by which the unit will rely on one or more of these alternative methods must be provided by the applicant. Any transfers of allowances recorded by EPA will automatically amend all applicable proposed or approved permit applications, compliance plans and permits. EPA may also require a demonstration of attainment of national ambient air quality standards for a source or, from the owner of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance.

CAA, Section 408(d) describes the requirements for Phase II permits, those to be issued by states with EPA-approved Title V programs. The owners of sources subject to Phase II of Title IV must have submitted their permit applications and compliance plans by January 1, 1996, to the state permitting authority. The states with approved programs must have issued the permits no later than December 31, 1997. Permit applications and compliance plans that were received by January 1, 1996, are binding and are enforceable as a permit for purposes of Titles IV and V until a permit is issued by the permitting authority.

CAA, Section 408(e) covers new sources or emissions units, those that commence commercial operation on or after November 15, 1990. New sources must submit a permit application and compliance plan to the permitting authority no later than 24 months before the later of (i) January 1, 2000, or (ii) the date on which the source commences operation. The permitting authority must issue a permit to a new source if the requirements of Titles IV and V are satisfied.

CAA, Section 408(f) covers stationary sources or emissions units subject to nitrogen oxides requirements. Applications and compliance plans must have been submitted to permitting authorities no later than January 1, 1998. The permitting authority must issue a permit to these sources or emissions units if the requirements of Titles IV and V are satisfied.

CAA, Section 408(g) allows the applicant to submit a revised application and compliance plan at any time after the initial submission. CAA, Section 408(h) states that it is unlawful for an owner or designated representative of the owner to fail to submit applications and compliance plans in the time period required by Title IV or to operate any affected source except in compliance with the terms and conditions of a permit and compliance plan issued by EPA or an approved permitting authority. CAA, Section 408(h)(3) prohibits shutdown of an electric utility steam-generating unit for failure to have an approved permit or compliance plan. However, the unit may be subject to applicable enforcement provisions under section 113 of the Act.

CAA, Section 408(i) requires that no permit can be issued to an affected source until the designated representative has filed a certificate of representation with regard to the requirements of Title IV, including the holding and distribution of allowances. This section also describes the requirements for certification of representation when there are multiple holders of a legal or equitable title to, or leasehold interest in, an affected unit or when a utility or industrial customer purchases power from an affected unit under life-of-the-unit, firm power contractual arrangements.

The federal regulations required to be developed under Section 408 of Title IV, 40 CFR Part 72 (58 FR 3591, January 11, 1993) and EPA guidance on Part 72, stipulate specific requirements for affected sources that are different from the requirements of 40 CFR Part 70. The differences include, but are not limited to, the following:

1. Only a designated representative or alternative designated representative of the source owner is authorized to make permit applications and other submissions under the Title IV

requirements and must file a certificate of representation with EPA before they can assume these responsibilities. 40 CFR 72, Subpart B.

2. The state permitting authority must allow EPA to intervene in any appeal of an acid rain permit. 40 CFR Part 72, § 72.72(5)(iv).
3. The period by which the acid rain portion of an operating permit can be appealed administratively is 90 days. Judicial appeal of an acid rain portion of a permit cannot occur after 90 days. 40 CFR Part 72, § 72.72(5)(ii).
4. An application is binding and enforceable as a permit until the permit is issued. 40 CFR Part 72, § 72.72(b)(1)(i)(B).
5. The acid rain portion of an operating permit must be covered by a permit shield. 40 CFR Part 72, § 72.51.
6. The acid rain rules allow for four different types of permit revisions. Two of these are the same as those provided for in 40 CFR Part 70: permit modifications and administrative amendments. The other two are unique to the acid rain program: fast-track modifications and automatic amendments. 40 CFR Part 72, Subpart H.
7. In general, permits are issued using Part 70 procedures. However, there are some exceptions. For instance, within 10 days of determining whether an acid rain application is complete, the permitting authority must notify EPA of that determination. The permitting authority must also notify EPA of any state or judicial appeal within 30 days of the filing of the appeal. 40 CFR Part 72, §§ 72.72(b)(1)(i)(C) and 72.72(b)(5)(iii).

CAA, Section 112(j) and 40 CFR Parts 9 and 63 (59 FR 26429, May 20, 1994) establish requirements and procedures for the regulation of major sources of hazardous air pollutants (HAPs) in the event that EPA lags more than 18 months behind schedule in issuing a MACT standard for an industry. These mandates specify that the owner or operator of each major source with emission units in the pertinent category must apply for a case-by-case MACT determination by the state.

40 CFR Parts 64, 70, and 71 (62 FR 54900, October 11, 1997) establish provision to implement compliance assurance monitoring (CAM) for major sources of air pollution that are required to obtain operating permits under Title V of the Clean Air Act. Subject to certain exemptions, the mandates require owners or operators of such sources to conduct monitoring that satisfies particular criteria to provide a reasonable assurance of compliance with applicable requirements under the CAA. Monitoring will focus on emissions units that rely on pollution control equipment to achieve compliance with applicable standards.

Comparison with Federal Requirements

Please describe the provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

Need

Please set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens or would be essential for the efficient and economical performance of an important governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.

Virginia submitted its Title V program for approval in November 1993, but EPA disapproved the program December 1994. Virginia then modified its original program by submitting five revisions in 1995 and 1996. To the revised program, EPA granted only interim approval in June 1997. The current rulemaking, initiated through a notice of intended regulatory action published in October 1997, represents Virginia's third attempt to gain full federal approval for its Title V program.

EPA found six deficiencies in Virginia's Title V program which must be corrected before the program can be federally approved. To achieve full program approval, Virginia made the following changes to address these deficiencies: (1) reduced the level of carbon monoxide considered insignificant, (2) required sources to include in their permit applications sufficient information regarding insignificant emissions units to enable applicable requirements for those units to be identified, (3) required applicable requirements for insignificant emission units to be included in permits, (4) redefined which emergency or standby compressors, pumps, and generators are insignificant, (5) prohibited off-permit changes pertaining to the requirements of the acid rain provisions of Title IV of the CAA, and (6) corrected its affirmative defense provisions.

Changes were also made to support commitments stated in a letter of February 27, 1997, from the DEQ director to EPA's Region III administrator amending previous program submittals. These commitments are stated as follows:

(4a) Decisions required under 9 VAC 5-80-50 D will be made by the Board (or Department by delegation). In cases where EPA has promulgated a standard under § 111 or § 112 after July 21, 1992 and failed to declare whether or not the facility or source category covered by the standard is subject to the Title V program, the Board in making decisions under 9 VAC 5-80-50 D shall presume that the facility or source category is subject to the Title V program.

(4b) Under the definition of "malfunction" in 9 VAC 5-80-60, failures caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error will not be considered malfunctions. This same interpretation applies to the definition in 9 VAC 5-80-370.

(4c) Under the definition of "research and development facility" in 9 VAC 5-80-60, subdivision c will mean that the source is not engaged in the manufacture of products for sale or exchange for commercial profit in any manner; thus, no support facility test will be required.

(4d) Under the provisions of 9 VAC 5-80-90 E 1, the Board will require that permit applications contain a citation and description of all applicable requirements, including those covering activities deemed insignificant under 9 VAC Chapter 80, Article 4. This requirement will also apply to 9 VAC 5-80-490 A 1.

(4f) In 9 VAC 5-80-200 A, administrative amendments under the provision in subdivision 1 that reads as follows: "Correction of typographical or any error, defect or irregularity which does not substantially affect the permit" will not include any additional administrative amendments than would be allowed under the provision in subdivision 2 that reads as follows: "Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source." This interpretation will also apply to 9 VAC 5-80-560 A.

(4g) Under the provision of 9 VAC 5-80-250 B 4, the notice of the malfunction by facsimile transmission, telephone or telegraph will include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken, as does the written statement. This interpretation will also apply to 9 VAC 5-80-650 B 4.

Additionally, other changes were made to accomplish the following: (1) to clarify applicable state requirements; (2) to bring the acid rain program into conformity with federal regulations; (3) to incorporate provisions relating to the new federal Compliance Assurance Monitoring (CAM) rule; and (4) to incorporate provisions relating to § 112(j) of the federal Clean Air Act.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description of changes implemented by the proposed regulatory action. Where applicable, include cross-referenced citations when the proposed regulation is intended to replace an existing regulation.

1. Some of the proposed amendments are intended to remove deficiencies which prevent full federal approval for Virginia's Title V program (see the third paragraph under "Statement of Conclusions and Need" below for an explanation of the number of the correction of each deficiency):

- 9 VAC 5-80-50 F (correction of deficiency 2)
- 9 VAC 5-80-110 A 1 (correction of deficiency 3)
- 9 VAC 5-80-250 B 4 (correction of deficiency 6)
- 9 VAC 5-80-280 C 1 (correction of deficiency 5)
- 9 VAC 5-80-360 E (correction of deficiency 2)
- 9 VAC 5-80-490 A 1 (correction of deficiency 3)
- 9 VAC 5-80-650 B 4 (correction of deficiency 6)
- 9 VAC 5-80-680 B i a (1) (correction of deficiency 5)
- 9 VAC 5-80-680 C 1 (correction of deficiency 5)
- 9 VAC 5-80-720 B 3 (correction of deficiency 1)
- 9 VAC 5-80-720 C (correction of deficiency 4)

2. Some of the proposed amendments are intended to support commitments made in a letter of February 27, 1997, from the DEQ director to EPA's Region III administrator amending previous program submittals (see the fourth paragraph under "Statement of Conclusions and Need" below for an explanation of the number for each commitment):

- 9 VAC 5-80-50 D 1 b (commitment 4a)
- 9 VAC 5-80-60 C "Malfunction" (commitment 4b)
- 9 VAC 5-80-60 C "Research and development facility" c (commitment 4c)

- 9 VAC 5-80-90 E 1 (commitment 4d)
- 9 VAC 5-80-200 A 1 (commitment 4f)
- 9 VAC 5-80-250 B 4 (commitment 4g)
- 9 VAC 5-80-320 C "Research and development facility" c (commitment 4c)
- 9 VAC 5-80-370 "Malfunction" (commitment 4b)
- 9 VAC 5-80-440 E 1 (commitment 4d)
- 9 VAC 5-80-560 (commitment 4f)
- 9 VAC 5-80-650 B 4 (commitment 4g)

3. Some of the proposed amendments are intended to incorporate guidance from EPA's White Papers of July 1995 and March 1996:

- 9 VAC 5-80-720 A (integration of federal trivial activities list with state's insignificant activities list)

4. Some of the proposed amendments are intended to clarify applicable state requirements:

- 9 VAC 5-80-60 C "Applicable requirement"
- 9 VAC 5-80-60 C "Applicable state requirement" a
- 9 VAC 5-80-110 C
- 9 VAC 5-80-300 A
- 9 VAC 5-80-370 "Applicable requirement"
- 9 VAC 5-80-370 "Applicable state requirement"
- 9 VAC 5-80-490 C
- 9 VAC 5-80-700 A

5. Some of the proposed amendments are intended to bring the acid rain program into conformity with federal regulations:

- 9 VAC 5-80-370, "Acid rain emissions limitation" (40 CFR 72.2)
- 9 VAC 5-80-370, "Acid rain program" and "Acid rain program regulations" (40 CFR 72.2)
- 9 VAC 5-80-370, "Affected states" (40 CFR 72.2)
- 9 VAC 5-80-370, "Allowance deduction" or "deduct" (when referring to allowances) (40 CFR 72.2)
- 9 VAC 5-80-370, "Applicable federal requirement" (40 CFR 70.2)
- 9 VAC 5-80-370, "Coal-fired" (40 CFR 72.2)
- 9 VAC 5-80-370, "Compliance certification" (40 CFR 72.2)
- 9 VAC 5-80-370, "Customer" (40 CFR 72.2)
- 9 VAC 5-80-370, "Designated representative" (40 CFR 72.2)
- 9 VAC 5-80-370, "Diesel fuel" (40 CFR 72.2)
- 9 VAC 5-80-370, "Permit" or "acid rain permit" (40 CFR 72.2)
- 9 VAC 5-80-370, "Eligible Indian tribe" (40 CFR 72.2)
- 9 VAC 5-80-370, "Emissions unit" (40 CFR 70.2)
- 9 VAC 5-80-370, "Excess emissions" (40 CFR 72.2)
- 9 VAC 5-80-370, "Existing unit" (40 CFR 72.2)
- 9 VAC 5-80-370, "Fossil-fuel fired" (40 CFR 72.2)
- 9 VAC 5-80-370, "Fuel oil" (40 CFR 72.2)
- 9 VAC 5-80-370, "Gas-fired" (40 CFR 72.2)
- 9 VAC 5-80-370, "Independent power production facility" (40 CFR 72.2)

- 9 VAC 5-80-370, "Natural gas" (40 CFR 72.2)
- 9 VAC 5-80-370, "Oil-fired" (40 CFR 72.2)
- 9 VAC 5-80-370, "Owner" (40 CFR 72.2)
- 9 VAC 5-80-370, "Owner or operator" (40 CFR 72.2)
- 9 VAC 5-80-370, "Permit revision" (40 CFR 70.2)
- 9 VAC 5-80-370, "Power purchase commitment" (40 CFR 72.2)
- 9 VAC 5-80-370, "Qualifying power purchase commitment" (40 CFR 72.2)
- 9 VAC 5-80-370, "Regulated air pollutant" (40 CFR 70.2)
- 9 VAC 5-80-370, "State" and "state operating permit program" (40 CFR 72.2)
- 9 VAC 5-80-370, "Submit" or "serve" (40 CFR 72.2)
- 9 VAC 5-80-370, "Utility competitive bid solicitation" (40 CFR 72.2)
- 9 VAC 5-80-370, "Utility unit" (40 CFR 72.2)
- 9 VAC 5-80-380 (40 CFR 72.6)
- 9 VAC 5-80-380 (40 CFR 72.6)
- 9 VAC 5-80-400 (40 CFR 72.8)
- 9 VAC 5-80-420 (40 CFR 72.9)
- 9 VAC 5-80-450 (40 CFR 72.40)
- 9 VAC 5-80-460 (40 CFR 72.44)
- 9 VAC 5-80-610 (40 CFR 72.82)
- 9 VAC 5-80-620 (40 CFR 72.83)

6. Some of the proposed amendments are intended to incorporate provisions relating to the new federal Compliance Assurance Monitoring (CAM) rule:

- 9 VAC 5-80-110 E 1 (CAM \ni 70.6(a)(3)(i)(A))
- 9 VAC 5-80-110 K 5 c (CAM \ni 70.6(c)(5)(iii))
- 9 VAC 5-80-110 K 5 e (CAM \ni 70.6(c)(5)(v))
- 9 VAC 5-80-490 E 1 (CAM \ni 70.6(a)(3)(i)(A))
- 9 VAC 5-80-490 N 5 c (CAM \ni 70.6(c)(5)(iii))
- 9 VAC 5-80-490 N 5 e (CAM \ni 70.6(c)(5)(v))

7. Some of the proposed amendments are intended to incorporate provisions relating to \ni 112(j) of the federal Clean Air Act:

- 9 VAC 5-60-120 et seq. (new rule)

8. Some of the proposed changes were made for other reasons:

- 9 VAC 5-80-60 C "Insignificant activity" (new definition needed)
- 9 VAC 5-80-60 C "State enforceable" (to conform to general administration regulation)
- 9 VAC 5-80-350 B and C (to clarify fee payment provisions)
- 9 VAC 5-80-370 "Insignificant activity" (new definition needed)
- 9 VAC 5-80-720 B 5 and 6 (to correct updated citation)

Alternatives

Please describe the process by which the agency has considered less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the

proposal that have been considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

As provided in the public participation procedures of the State Air Pollution Control Board, the department included, in the Notice of Intended Regulatory Action, a description of the department's alternatives and a request for comments on other alternatives and the costs and benefits of the department's alternatives or any other alternatives that the commenters provided.

Following the above, alternatives to the proposed regulation amendments were considered by the department. The department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option was chosen because it meets the stated purpose of the regulation: to bring the regulations into compliance with federal guidance concerning the implementation of Title V of the federal Clean Air Act (42 U.S.C. §§ 7661-7661f) and of federal regulations concerning state operating permit programs (40 CFR Part 70).
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because it will not bring the regulations into compliance with federal guidance concerning the implementation of Title V of the federal Clean Air Act (42 U.S.C. §§ 7661-7661f) and of federal regulations concerning state operating permit programs (40 CFR Part 70). Furthermore, alternative regulatory changes might impose requirements that could exceed or be inconsistent with federal statutory and regulatory mandates.
3. Take no action to amend the regulations. This option was not chosen because it will not bring the regulations into compliance with federal guidance concerning the implementation of Title V of the federal Clean Air Act (42 U.S.C. §§ 7661-7661f) and of federal regulations concerning state operating permit programs (40 CFR Part 70). Furthermore, taking no action might lead to federal sanctions.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

1. **SUBJECT:** Definition of "expeditiously"

COMMENTER: Jeffrey L. Humes, P.E., independent contractor

TEXT: In the "Applicable Statutory Requirements" section of the Notice of Intended Regulatory Action, the word "expeditiously" [as it pertains to the completeness determination for a permit application] should be defined (via a defined evaluation period upon receipt) or excluded from the finalized regulation. Having this word in the regulation may muddle the opinion of what an "expeditious" time frame is when conducting evaluations of various detail and complexity.

RESPONSE: The language to which the commenter refers is not in the draft proposal; it is taken from the federal mandates set forth in § 502(b) of the Clean Air Act and in 40 CFR 70.4(b). The draft proposal clearly specifies that the permit application completeness determination shall be made within 60 days (9 VAC 5-80-70 D 3).

No change was made to the draft proposal as a result of this comment.

2. **SUBJECT:** Definition of "stationary source"

COMMENTER: D. D. Means, Facilities Electrical Engineer, Boeing Information Services, Inc.

TEXT: Boeing Information Services has several large diesel engine generator sets used for emergency power for our data center operations. We therefore qualify as a major source, having the potential to emit in excess of 100 tons per year (tpy) of certain pollutants. However, as the engines are only for emergency situations, the total emissions are generally less than 50 tpy of NO_x and VOCs, another criterion for a major source in ozone nonattainment areas designated as serious (Northern Virginia). We have two generator systems, each with multiple engines. Each of the two systems provides backup power to differing parts of the building. Within each system, the engines may come on or stay off as required by existing load and operator preference. The permit we now have considers the systems as one source, with estimated emissions and therefore engine operation determined by the total system engine hours, as opposed to each individual engine. This allows us the flexibility to switch engines on-line and off-line as required. We are very comfortable with this operating plan and would encourage the Commonwealth to adopt this strategy for all suitable occasions.

RESPONSE: A "stationary source" includes "all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous properties, and are under the control of the same person" (9 VAC 5-5-10-20). Since no change to this definition is contemplated for the proposed regulatory amendments, the generators to which the commenter refers will continue to be considered together as one source.

No change was made to the draft proposal as a result of this comment.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The department will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated within three years after its effective date.

The specific and measurable goals the proposed regulation amendments are intended to achieve are as follows:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To enhance the department's ability to ensure compliance with all applicable federal requirements under the Clean Air Act and specific requirements under the state code.
3. To identify and clarify for the department and source owner exactly which air quality program requirements are applicable to the permitted source.

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